

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Susan Falletta and Joseph Falletta

Plaintiffs,

v.

Dr. Thomas Connelly, DDS
Dr. Bryan Hoertdoerfer, DDS,
Hoertdoerfer Equities, LLC; and
Hoertdoerfer Dentistry, PLLC

Defendants.

CASE NO. 1:16-cv-00029

Chief Judge Joseph N. Laplante

**MOTION OF THE DEFENDANTS,
DR. BRYAN HOERTDOERFER, DDS, HOERTDOERFER EQUITIES, LLC, and
HOERTDOERFER DENTISTRY, PLLC,
TO CONTINUE THE TRIAL DATE**

NOW COME, the Defendants, Bryan Hoertdoerfer, DDS, Hoertdoerfer Equities, LLC, and Hoertdoerfer Dentistry, PLLC ("Defendants"), by and through their counsel, and hereby move and respectfully request that this Court continue the trial date currently set for July 10, 2018 to February 25, 2019 (or some other available date mutually agreeable to the Court and all counsel). The bases for this Motion are that: co-defendant Dr. Thomas Connelly recently filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Central District of California, thereby staying the instant litigation; no depositions of any parties have occurred to-date; Dr. Connelly now resides in California and having dismissed his counsel is now appearing *pro se* in this matter, further complicating the occurrence of events once the automatic stay is lifted; and counsel for the defendants has a previously scheduled trial obligation in Massachusetts Superior Court that coincides with the July 10, 2018 trial date, the occurrence of which

all parties and the Court were made aware at the time the current trial date was set in this matter.

Counsel for the Defendants respectfully requests that the instant trial date be continued and rescheduled for February 25, 2019 (or some other available date mutually agreeable to the Court and all counsel) to provide a realistic opportunity for Dr. Connelly's Bankruptcy proceedings to resolve, and to allow the instant litigation to resume, thereby providing all parties the opportunity to conduct the necessary depositions and follow-up discovery, specifically including the deposition of Dr. Connelly.

In support of this Motion, the Defendants state as follows:

1. On February 12, 2018, Plaintiff filed a partially-assented-to Motion to Extend Deadlines Established in the Court's May 17, 2017 Tracking Order. See Docket and Document No. 54, attached as **Exhibit A**. In this motion, Plaintiff noted that Defendants' counsel objected to the proposed new trial date of July 10, 2018. See **Exhibit A**. The reason for the objection is because Attorney Ellen Cohen, Counsel for the Defendants, has a previously scheduled trial in Massachusetts Superior Court that will begin on July 9, 2018 (scheduled by court on May 18, 2017) and is anticipated to last until July 20, 2018; as a result, Attorney Cohen could not in good faith agree to schedule a conflicting trial date in this matter. See Docket indicating conflicting trial for Attorney Cohen, attached as **Exhibit B**; Emails among counsel dated February 9 & 12, 2018, attached as **Exhibit O**.
2. On January 12, 2018, Dr. Connelly filed for Chapter 7 Bankruptcy in the Central District of California, thereby staying the instant litigation. See Bankruptcy Court Docket, attached as **Exhibit C**.
3. On January 15, 2018, counsel for defendant Thomas Connelly, DDS filed a Motion to Withdraw as counsel. See **Exhibit A**, at ref. no. 54. On February 23, 2018, the Court Granted Attorney Mark F. Sullivan's Motion to Withdraw as Attorney for Thomas Connelly. See **Exhibit A**, at ref. no. 54.
4. On March 5, 2018, Defendant Thomas Connelly, DDS filed a Notice of his *Pro Se* Appearance in the instant matter. See **Exhibit A**, at ref. no. 54.

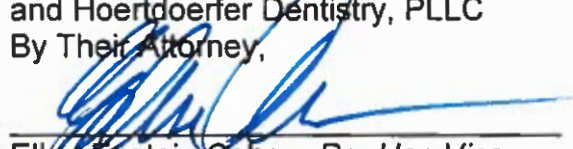
5. On March 6, 2018, the court granted the parties' partially- assented- to Motion to Continue and Extend Deadlines, setting the new discovery deadline as May 31, 2018, establishing dates on which the parties Pretrial Statements and LR 16.2(d) Objections are due, and setting Jury Selection/Trial to begin for a two-week period beginning on July 10, 2018. See **Exhibit A**, at ref. no. 56.
6. On March 12, 2018, Defendant Thomas Connelly, DDS filed an official Motion to Stay the instant litigation due to his Chapter 7 Bankruptcy filing. See **Exhibit A**, at ref. no. 57.
7. The Bankruptcy Court initially scheduled the Meeting of Creditors of Dr. Connelly to occur on February 20, 2018. See **Exhibit C**, at ref. no. 5; Full Docket Text for Document 5, attached as **Exhibit D**. This meeting did not take place as scheduled, however, and on March 5, 2018, the Court rescheduled the meeting to occur on March 30, 2018, pending the trustee's review of bankruptcy documents as provided by Dr. Connelly. See **Exhibit C**, at ref no. 17; Continuance of Meeting of Creditors (Rule 2003(e)) (Trustee's 341 Filings), attached as **Exhibit E**.
8. On March 15, 2018, the Court approved the Bankruptcy Trustee's Application to employ an outside firm as financial advisors and consultants for the trustee in connection with his duties connected to Dr. Connelly's bankruptcy filing. See **Exhibit C**, at ref. no. 21; Order Approving Trustee's Application to Employ the Firm of CBIZ Valuation Group, LLC As Financial Advisors and Consultants for Trustee, attached as **Exhibit N**.
9. In years past, Dr. Connelly has twice filed Chapter 7 bankruptcy. See Statement of Related Cases by Dr. Connelly, attached as **Exhibit F**. Dr. Connelly filed for Chapter 7 Bankruptcy on October 10, 2007 in Massachusetts, and it was resolved on September 8, 2008. See **Exhibit F**. On July 19, 2013, Dr. Connelly filed for Chapter 7 Bankruptcy in the Southern District of New York on behalf of England York Cosmetic Dentistry PLLC, which is still pending resolution. See **Exhibit F**. Counsel is not optimistic that Dr. Connelly's current Bankruptcy filing will resolve prior to the currently set trial date in July 2018 due to the numerous creditors with unsecured claims that Connelly identified in his Bankruptcy documents. See Official Forms 106A/B; 106C; 106D; 106E/F; 106H; and Verification of Master Mailing List of Creditors, attached as **Exhibit H**.
10. In his most recent Bankruptcy filings, Dr. Connelly claims liabilities of almost \$2 million to dozens of creditors, including but not limited to the Internal Revenue Service, Massachusetts and New York Departments of Revenue, and multiple other private creditors. See Official Form 106Sum: Summary of Your Assets and Liabilities and Certain Statistical Information, at p.1, attached as **Exhibit G**; **Exhibit H**. Dr. Connelly also lists creditors that are connected with his 2013 Bankruptcy filing in New York. See **Exhibit H**, at Schedule E/F, Page 5 of 16.

11. Dr. Connelly's deposition was initially scheduled to be taken in this case on November 21, 2017. See email correspondence from Attorney Mark Sullivan dated November 13, 2017, attached as **Exhibit I**. On November 13, 2017, counsel for Dr. Connelly advised that Dr. Connelly would not be available for his deposition, stating that Dr. Connelly's "employer has caused this request." See **Exhibit I**. Counsel rescheduled Dr. Connelly's deposition for January 26, 2018, but in light of his Bankruptcy filing, his deposition was again postponed. See email correspondence among all counsel dated November 2017, attached as **Exhibit J**.
12. Dr. Hoertdoerfer's deposition initially was scheduled for November 30, 2017, but after Dr. Connelly indicated he was unable to go forward with his November 21, 2017 deposition, this was rescheduled for February 2, 2018. See emails among counsel, attached as **Exhibit K**. Due to the currently imposed stay of litigation resulting from Connelly's Bankruptcy, however, Dr. Hoertdoerfer's deposition did not go forward on February 2, 2018. See email to Attorney Hurley dated January 25, 2018, attached as **Exhibit L**.
13. The depositions of Plaintiffs, Mr. and Mrs. Falletta, previously were scheduled to be taken on February 13, 2018, see correspondence dated December 7 & 12, 2017, attached as **Exhibit M**, but did not go forward due to the stay imposed as a result of Dr. Connelly's Bankruptcy filing.
14. Dr. Connelly's deposition and pending discovery responses are critical not only to Plaintiffs, but to the moving Defendants' ability to prepare their defense. Dr. Connelly is the only Defendant who provided dental care and treatment to the Plaintiff Mrs. Falletta, from which the claims in this case all arise.
15. "The decision to grant or deny a continuance lies within the sound discretion of the district court." Rhodes v. Amarillo Hospital District, 654 F.2d 1148, 1153 (5th Cir. 1981). However, a showing of material prejudice from a denial of a continuance weighs in favor of granting the request. Phillips v. Ferguson, 182 F.3d 769, 774 (10th Cir. 1999) (considering prejudice in determining whether a continuance should have been granted). Declining Defendants' motion to continue the trial date currently set for July 10, 2018 would materially prejudice the interests of the Defendants.
16. The Defendants have already been prejudiced by Defendant Dr. Connelly's stalling tactics when he failed to keep his previously scheduled deposition in November 2017, likely knowing he planned to file for Bankruptcy. Now, due to the imposition of the automatic stay while Dr. Connelly's most recent Bankruptcy filing resolves, Defendants are unable to conduct depositions of the parties.

17. Additionally, due to the indicated complexity of resolving Dr. Connelly's most recent Bankruptcy, which in part relies on resolving at least portions of a separate Bankruptcy proceeding filed in 2013 that is still pending in New York, the Defendants do not believe it is realistic to expect that the Bankruptcy matter(s) will resolve during the next four months, AND still leave adequate time for the parties to conduct the necessary discovery that has been stayed. Dr. Connelly's prior Massachusetts Bankruptcy alone took almost one full year to resolve.
18. Forcing the Defendants to prepare for a July 2018 trial without the benefit of any deposition testimony, including that of the central party – Dr. Connelly - deprives the Defendants of fully examining the positions of the involved parties in light of all facts, and further subjects them to a teetering holding pattern of uncertainty for the next four months. Pushing the current trial date out by seven months will realistically allow for full resolution of Dr. Connelly's Bankruptcy proceedings, and allow the parties sufficient time thereafter within which to schedule and conduct depositions of the parties, especially where Dr. Connelly now lives in California and the plaintiffs live in a remote part of Vermont.
19. Further, as noted to the Court and all counsel when the current trial date was discussed, Attorney Cohen cannot in good faith seek to reschedule an already-scheduled trial in a case originally filed in 2014 where she has consistently represented to plaintiffs and this Court her unavailability due to this trial, and where Plaintiffs were unwilling to agree to any potential trial dates beyond summer 2018.

WHEREFORE the Defendants respectfully request that this Honorable Court continue the trial date in this matter from July 10, 2018 to February 25, 2019 (or some other available date mutually agreeable to the Court and all counsel).

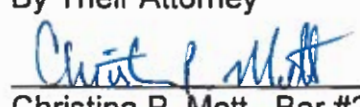
Defendants,
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